

United States District Multi-District Litigation
Northern District of West Virginia

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SEP 08 2015

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN.

) Craig Cunningham
) Plaintiff, Pro-se
)

) v. Civ Action
)

3:15-847

) Enagic USA, Inc, Peter Polselli, Terry Collins, Rick Freeman, Angela Liner,
) Christian Kinney, The 7 Figure wealth Corporation, Corazon Management Group,
) Inc., Jeffrey Howard, Susie Tremblay-Brown, and John/Jane Doe's 1-10
) Defendants.

Plaintiff's Amended Complaint

1. The Plaintiff in this case is Craig Cunningham, a natural person and was resident of Davidson County at all times relevant to the complaint, and currently has a mailing address of 5543 Edmondson Pike, ste 248, Nashville, TN 37211
2. Upon information and belief, Enagic USA Inc., is a California Corporation that is operating from 4115 Spencer Street, Torrance, CA 90503 and can be served via registered agent Toshio Maehara at 24 Mela Ln, Rancho Palos Verdes, CA 90275 .
3. Peter Polselli is a natural person who can be served at 50 Danes street, Patchogue, NY 11772.
4. Angelina Liner is a natural person whos address for service is currently unknown, but should be obtained through subpoena or discovery.
5. Rick Freeman is a natural person whose address is currently unknown but should be obtained thorough subpoena or discovery.

6. Terry Collins is a natural person and whose address for service is currently unknown, but should be obtained through subpoena or discovery.
7. Oscar Christian Kinney is a natural person who can be served at 29326 Turnbury Village Dr. Spring, Tx 77386 or 1020 Venitia Ave., Coral Gables, FL 33134
8. The 7 Figure Wealth Corporation is a Texas Corporation owned by Oscar Christian Kinney and can be served via registered agent at 29326 Turnbury Village Dr. Spring, Tx 77386
9. Jeffrey Howard, is a natural person who can be served at 5348 Vegas Dr., Las Vegas, NV 89108. He is the manager/officer of the Corazon Management Group, Inc
10. The Corazon Management Group, Inc., is a Las Vegas Corporation operating from 5348 Vegas Drive, Las Vegas, NV 89108. The registered agent is EastBiz.com, Inc. at 5348 Vegas Drive, Las Vegas 89108.
11. Susie Tremblay-Brown is a natural person whose address for service is not yet known to the Plaintiff, but should be obtained through discovery.

Jurisdiction and Factual Allegations

12. Jurisdiction of this court arises as the acts happened and the contract was breached in this county. Venue in this District is proper in that the defendants transact business here, and the acts and transactions occurred here.
13. Personal jurisdiction is apparent as the Defendants placed multiple phone calls to the Plaintiff's cell phone in an attempt to solicit the Plaintiff to join

their "get rich quick" schemes to sell an overpriced water dispenser or other get rich quick schemes.

14. In 2014 and 2015, the Plaintiff received multiple automated phone calls with a pre-recorded message to the Plaintiff's cell phone which informed the Plaintiff about an exciting business opportunity to make money quickly. The Plaintiff also received multiple unsolicited text messages to his cell phone soliciting the Plaintiff to join the program and attend conference calls and other meetings.
15. These calls were not related to any emergency purpose, nor were the calls placed with the Plaintiff's consent.
16. These phone calls violated the TCPA in two ways, first by having a pre-recorded message and by placing automated calls to the Plaintiff's cell phone. Secondly, the calls violated 47 USC 227(c)(5) as codified under 47 CFR 64.1200 as the calls failed to identify the party placing the calls. The calls also violated 47 CFR 64.1200 by the defendants not maintaining a do not call policy, not maintaining a do not call list, and not training their agents/employees on the use of a do not call list.

"Secrets of the wealthy/Super Success Machine" calls

17. One person, "Coach Pete" Peter Pozelli claimed to make over \$30,000 per month by making thousands of automated calls to consumers pitching an "automated marketing system" and promoting the "secrets of the wealthy" call seminars.

18. Apparently the secret of the wealthy is to make tens of thousands of illegal phone calls to consumers to ensnare an unwitting few and bilk them out of thousands of dollars selling the American Dream.
19. Peter regularly sent unsolicited text messages and regularly placed unsolicited phone calls to the Plaintiff. Peter placed at least 30 unsolicited text messages to the Plaintiff, which count as illegal phone calls per the FCC's interpretation of the TCPA. Peter has similarly made dozens of illegal telephone calls to the Plaintiff as well offering the same promise of fast, easy money.
20. One of the text messages on July 15, 2015 stated *"It's pete 8PM EST Tonight: SSM Conf Call, 1-857-232-0157 enter code 33862. Hear how u can make \$10k per month. Q&A session for u too."*
21. This "Business opportunity" didn't consist of any actual products, franchise, or services being offered for sale. Nothing of value was offered in exchange for thousands of dollars charged up front. Peter or "Coach Pete" as he called himself, offered nothing more than the opportunity to pay thousands of dollars to "buy" the opportunity to place thousands of illegal automated telephone calls to other consumers and hope for a few unwitting victims to fall prey to the scheme. It is similar to a pyramid scheme and was previously known as "Cash gifting".
22. In an email to the Plaintiff on May 11, 2015, Peter stated *"And when people start to sign up under you, that's when the real \$\$\$ comes in. Remeber the comp (Compensation) plan in the webinar? If not, watch*

cashfreedomvideo.com. Everyone you bring in owes their first sale to you.

That's the training sale or one up sale. It's awesome and I love it."

23. Similarly, Christian Kinney placed multiple illegal telephone calls to the Plaintiff selling a "Secrets of the Wealthy" program. Even after the Plaintiff told Christian that he wasn't interested, but Christian or "Coach Christian" continued to call the Plaintiff selling this fast cash, money making opportunity. This is another version of the "Secrets of the wealthy" program with a pyramid scheme based on placing illegal telemarketing calls to consumers. Christian Kinney violated the TCPA by placing multiple automated telephone calls with pre-recorded messages to the Plaintiff.

Enagic Kangen Water Machine Sales

24. Another person, Rick Freeman claimed to have made over \$80,000 in a 5 months, selling Enagic water machines for \$4,000 each, which produce their "Kangen" alkaline water, made over 90 sales, and was on track to make over \$500,000 this year. He claimed to be the #1 team in the United States and was ranked #12 in the world and was congratulated and recognized by the company as part of a monthly sales competition.
25. Terry Collins introduced Rick Freeman to Enagic and helped attempt to recruit the Plaintiff into the program. Terry apparently was responsible for actually making and arranging for the automated calls to be made to the Plaintiff and obtaining tens of thousands of phone numbers to place illegal telephone calls to.

26. Apparently through cooperation Rick and direction by Terry Collins, Rick placed dozens of automated calls to the Plaintiff over several months repeatedly offering the Enagic water machine for sale. These automated calls from Rick contained pre-recorded messages describing a "work from home" money making opportunity.
27. Both Terry and Rick violated the TCPA by making automated calls with pre-recorded messages to the Plaintiff's cell phone.
28. When the Plaintiff finally spoke to Rick he described the Enagic machine and had several more long videos and messages for the Plaintiff to listen to that described the pyramid scheme type compensation structure for Enagic.
29. These water machines make numerous over the top, unsubstantiated health claims such as curing Gangrene and making dog poo less stinky. According to an email from another Enagic sales agent, Kangen water has the following benefits: *"To prevent hangovers before going to bed, **Pets Health:** Your animal's health will improve dramatically. Unpleasant body order will decrease as well as the odor of their feces and urine. **Anti-Aging:** This water reduces free radicals and has been acclaimed as FREE RADICAL WATER. **EXPONENTIALLY enhance your supplement protocols:** The microclustered properties of the Kangen water give it the ability to dissolve supplements in your body and carry them to your cells with uncanny capacity. **Hair Care:** Use instead of rinse: Reduces annoying tangles and brings out a radiant shine. **For washing your face:***

astringent properties are effective in toning and firming your skin. Soak diabetic ulcers and gangrenous lesions 15 minutes per evening for two to three weeks to see miraculous results of these lesions disappearing”¹

30. In an email to Rick Freeman from Shoko Johnson, Orlando Branch Manager, Shoko stated *“Per our recent phone conversation, attached please find the global contest result from 6/1-6/28. He is the TOP USA distributor in 8P Machine sales!! We are very proud of you!! Keep up the good work, Rick!!”²*
31. A file was attached that showed Rick freeman ID # 680882 was ranked 4A and was the 12th highest in the world in sales and #1 in the USA with 12 units sold in the month of June 2015.³
32. Angela Linear also made these calls on behalf of Enagic and offered their water system for sale to the Plaintiff and the business opportunity of making thousands of illegal calls to other consumers. Apparently, the Defendants are all dialing from the same list of consumers again and again and different people continue to call the Plaintiff pitching the same “get rich quick” opportunity.
33. Jeffrey Howard either directly or through is Corporation, Corazon Management Group, Inc., has also placed multiple automated telephone calls to the Plaintiff’s cell phone pitching the same Enagic water machine get rich quick money making opportunity. Jeffrey Howard stated to the

¹<http://gersontreatment.com/kangen-water/>

²Exhibit A

³Exhibit B

Plaintiff in an email that he used Susie Tremblay-Brown to arrange the automated telephone calls and Susan stated that she personally obtains the phone number leads, uploads the leads that are used in the robocalling campaigns and arranges for robocaller campaigns, assists with technical setup and gives instruction on how to place these robocaller campaigns.

34. The services used were through 800link and phoneprospector

35. In making these calls, the agents of Enagic were essentially marketing the products manufactured by Enagic and Enagic ratified the conduct by sponsoring sales contests and congratulating the agents as well as paying out tens of thousands of dollars in compensation to agents and exercising control over the marketing efforts by these agents.

36. The 6th circuit as well as multiple other courts have ruled that there is direct liability to include for corporate actors such as executives and managers and vicarious liability for corporations that ultimately benefit or sell services/products illegally marketed by 3rd parties. The agents are also jointly and severally liable for the phone calls as well.

37. Enagic sells their equipment via these agents placing tens of thousands of illegal phone calls based on leads bought by lead generation services. Enagic continues to make the illegal phone calls despite knowing that the leads are questionable at best and the individuals being calls have not given express or implied consent to be called with an automated telephone dialing system or pre-recorded messages. The Plaintiff was one

of the consumers called multiple times on multiple phone numbers over the years. The Plaintiff has been called at least 30 times by the defendants or agents herein.

38. The calls were placed with apparent authority, actual authority, and the ratification of Enagic. Enagic knew of the illegal conduct by these agents and their improper telemarketing, and still refused to exercise control or authority over their agents to reduce or eliminate the improper sales methods.
39. Enagic monitors and engages in some control over the advertising methods and controls what their agents and distributors say, for example, Rick Freeman states in an email that *"in order to comply with Enagic's policies and procedures, we had to remove the name "Enagic" from the website, although all of the information will still point to Enagic"* in reference to a website "www.noupfrontmoney.com" which is being used to market and promote the Enagic machines. Similarly in the pre-recorded messages, there is no mention of Enagic of the specifics of the "business opportunity" which is being mentioned, and it is only when you speak directly with an agent do you find out the real company benefitting from the calls.
40. Enagic engaged in this conduct to obscure and limit the disclosure of their involvement in these illegal calls and this is just an example of the controls and authority Enagic exhibits over dealers and distributors.

CAUSES OF ACTION:

COUNT I

Violations of the Telephone Consumer Protection Act (TCPA)

41. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.
42. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by placing calls with pre-recorded/automated messages to the Plaintiff's cell phone in violation of 47 USC 227(b)

CAUSES OF ACTION:

COUNT II

Violations of the Telephone Consumer Protection Act (TCPA)

43. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.
44. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by placing unsolicited and unwelcome telephone calls to the Plaintiff's cell phone. These phone calls also violated the TCPA by having an pre-recorded message that didn't state the name, address, or phone number of the calling party and the defendants failed to have a do not call policy, failed to train their agents on the use of a do not call policy, in violation of 47 USC 227(c)(5) as codified under 47 CFR 227(d)

PRAYER FOR DAMAGES AND RELIEFS

A. WHEREFORE, Plaintiff, Cunningham, respectfully prays and requests that judgment be entered against each and every defendant for the following:

B. Statutory damages of \$3000 for each phone call.

C. Pre-judgment interest from the date of the phone calls.

D. Attorney's fees for bringing this action as applicable; and

E. Costs of bringing this action; and

F. For such other and further relief as the Court may deem just and proper

I, Craig Cunningham, Affiant, hereby attest to and certify that the facts contained in the foregoing complaint are true and correct to the best of my knowledge, information and belief and that a true and correct copy of the foregoing was sent to the defendants in this case.

Respectfully submitted,



Craig Cunningham

Plaintiff, Pro-se

Mailing address:

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Nashville, tn 37211

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9/4/2015

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